

1 SILVANO B. MARCHESI (SBN 42965)  
County Counsel  
2 JANET L. HOLMES (SBN 107639)  
Deputy County Counsel  
3 COUNTY OF CONTRA COSTA  
651 Pine Street, 9th Floor  
4 Martinez, California 94553  
Telephone: (925) 335-1800  
5 Facsimile: (925) 335-1866  
email: jholm@cc.cccounty.us  
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Attorneys for Defendants  
7 COUNTY OF CONTRA COSTA;  
DEPUTY SHERIFF JUSTIN CHURCH;  
8 SHERIFF WARREN RUPF;

9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12  
13

14 JAN MAGNUSSEN,  
15 Plaintiff

16 v.

17 COUNTY OF CONTRA COSTA;  
18 DEPUTY SHERIFF JUSTIN CHURCH,  
INDIVIDUALLY AND IN HIS  
19 OFFICIAL CAPACITY AS A DEPUTY  
SHERIFF FOR THE COUNTY OF  
20 CONTRA COSTA; WARREN RUPF,  
INDIVIDUALLY AND IN HIS  
21 OFFICIAL CAPACITY AS SHERIFF  
FOR THE COUNTY OF CONTRA  
22 COSTA; AND DOES ONE THROUGH  
100,

23 Defendants.  
24

No. C 07 3407 EDL

STIPULATION AND [PROPOSED]  
PROTECTIVE ORDER

25 1. PURPOSES AND LIMITATIONS

26 Disclosures and discovery activity in this action are likely to involve production of  
27 confidential, proprietary, or private information for which special protection from public  
28 disclosure and from use for any purpose other than prosecuting this litigation would be

1 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the  
2 following Stipulated Protective Order. The parties acknowledge that this Order does not confer  
3 blanket protections on all disclosures or responses to discovery and that the protection it  
4 affords extends only to the limited information or items that are entitled under the applicable  
5 legal principles to treatment as confidential. The parties further acknowledge, as set forth in  
6 Section 10, below, that this Stipulated Protective Order creates no entitlement to file  
7 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must  
8 be followed and reflects the standards that will be applied when a party seeks permission from  
9 the court to file material under seal.

10  
11 2. DEFINITIONS

12 2.1 Party: any party to this action, including all of its officers, directors,  
13 employees, consultants, retained experts, and outside counsel (and their support staff).

14 2.2 Disclosure or Discovery Material: all items or information, regardless of the  
15 medium or manner generated, stored, or maintained (including, among other things, testimony,  
16 transcripts, or tangible things) that are produced or generated in disclosures or responses to  
17 discovery in this matter.

18 2.3 "Confidential" Information or Items: information (regardless of how generated,  
19 stored or maintained) or tangible things that qualify for protection under standards developed  
20 under F.R.Civ.P. 26(c).

21 2.4 "Highly Confidential – Review by Authorized Personnel Only" Information or  
22 Items: extremely sensitive "Confidential Information or Items" whose disclosure to another  
23 Party or nonparty would create a substantial risk of serious injury that could not be avoided by  
24 less restrictive means.

25 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
26 Producing Party.

27 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery  
28 Material in this action.

1           2.7. Designating Party: a Party or non-party that designates information or items  
2 that it produces in disclosures or in responses to discovery as "Confidential" or "Highly  
3 Confidential — Review by Authorized Personnel Only."

4           2.8 Protected Material: any Disclosure or Discovery Material that is designated as  
5 "Confidential" or as "Highly Confidential – Review by Authorized Personnel Only."

6           2.9. Outside Counsel: attorneys who are not employees of a Party but who are  
7 retained to represent or advise a Party in this action.

8           2.10 House Counsel: attorneys who are employees of a Party.

9           2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as  
10 their support staffs).

11           2.12 Expert: a person with specialized knowledge or experience in a matter  
12 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
13 witness or as a consultant in this action and who is not a past or a current employee of a Party  
14 or of a competitor of a Party's and who, at the time of retention, is not anticipated to become  
15 an employee of a Party or a competitor of a Party's. This definition includes a professional jury  
16 or trial consultant retained in connection with this litigation.

17           2.13 Professional Vendors: persons or entities that provide litigation support  
18 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
19 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
20 subcontractors.

### 21 22 3. SCOPE

23           The protections conferred by this Stipulation and Order cover not only Protected  
24 Material (as defined above), but also any information copied or extracted therefrom, as well as  
25 all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or  
26 presentations by parties or counsel to or in court or in other settings that might reveal Protected  
27 Material.

1 4. DURATION

2 Even after the termination of this litigation, the confidentiality obligations imposed by  
3 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a  
4 court order otherwise directs.

5  
6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
8 or non-party that designates information or items for protection under this Order must take  
9 care to limit any such designation to specific material that qualifies under the appropriate  
10 standards. A Designating Party must take care to designate for protection only those parts of  
11 material, documents, items, or oral or written communications that qualify – so that other  
12 portions of the material, documents, items, or communications for which protection is not  
13 warranted are not swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or  
14 routinized designations are prohibited. Designations that are shown to be clearly unjustified, or  
15 that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the  
16 case development process, or to impose unnecessary expenses and burdens on other parties),  
17 expose the Designating Party to sanctions. If it comes to a Party's or a non-party's attention  
18 that information or items that it designated for protection do not qualify for protection at all, or  
19 do not qualify for the level of protection initially asserted, that Party or non-party must  
20 promptly notify all other parties that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
22 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,  
23 material that qualifies for protection under this Order must be clearly so designated before the  
24 material is disclosed or produced. Designation in conformity with this Order requires:

25 (a) for information in documentary form (apart from transcripts of depositions  
26 or other pretrial or trial proceedings), that the Producing Party affix the legend  
27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – REVIEW BY AUTHORIZED  
28 PERSONNEL ONLY" at the top of each page that contains protected material. If only a

1 portion or portions of the material on a page qualifies for protection, the Producing Party also  
2 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
3 margins) and must specify, for each portion, the level of protection being asserted (either  
4 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – REVIEW BY AUTHORIZED  
5 PERSONNEL ONLY"). A Party or non-party that makes original documents or materials available  
6 for inspection need not designate them for protection until after the inspecting Party has indicated  
7 which material it would like copied and produced. During the inspection and before the designation,  
8 all of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –  
9 REVIEW BY AUTHORIZED PERSONNEL ONLY." After the inspecting Party has identified the  
10 documents it wants copied and produced, the Producing Party must determine which documents, or  
11 portions thereof, qualify for protection under this Order, then, before producing the specified  
12 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY  
13 CONFIDENTIAL – REVIEW BY AUTHORIZED PERSONNEL ONLY") at the top of each page  
14 that contains Protected Material. If only a portion or portions of the material on a page qualifies for  
15 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
16 appropriate markings in the margins) and must specify, for each portion, the level of protection being  
17 asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – REVIEW BY AUTHORIZED  
18 PERSONNEL ONLY").

19 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
20 that the Party or non-party offering or sponsoring the testimony identify on the record, before the close  
21 of the deposition, hearing, or other proceeding, all protected testimony, and further specify any  
22 portions of the testimony that qualify as "HIGHLY CONFIDENTIAL – REVIEW BY AUTHORIZED  
23 PERSONNEL ONLY." When it is impractical to identify separately each portion of testimony that is  
24 entitled to protection, and when it appears that substantial portions of the testimony may qualify for  
25 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the  
26 record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify the  
27 specific portions of the testimony as to which protection is sought and to specify the level of protection  
28 being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – REVIEW BY AUTHORIZED



PERSONNEL ONLY"). Only those portions of the testimony that are appropriately designated for protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order. Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – REVIEW BY AUTHORIZED PERSONNEL ONLY," as instructed by the Party or nonparty offering or sponsoring the witness or presenting the testimony.

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – REVIEW BY AUTHORIZED PERSONNEL ONLY." If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they qualify as "Confidential" or as "Highly Confidential – Review by Authorized Personnel Only."

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as "Confidential" or "Highly Confidential – Review by Authorized Personnel Only" does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. If material is appropriately designated as "Confidential" or "Highly Confidential – Review by Authorized Personnel Only" after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a

1 Party does not waive its right to challenge a confidentiality designation by electing not to  
2 mount a challenge promptly after the original designation is disclosed.

3 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating  
4 Party's confidentiality designation must do so in good faith and must begin the process by  
5 conferring directly (in voice to voice dialogue; other forms of communication are not  
6 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must  
7 explain the basis for its belief that the confidentiality designation was not proper and must give  
8 the Designating Party an opportunity to review the designated material, to reconsider the  
9 circumstances, and, if no change in designation is  
10 offered, to explain the basis for the chosen designation. A challenging Party may proceed to  
11 the next stage of the challenge process only if it has engaged in this meet and confer process  
12 first.

13 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality  
14 designation after considering the justification offered by the Designating Party may file and  
15 serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
16 applicable) that identifies the challenged material and sets forth in detail the basis for the  
17 challenge. Each such motion must be accompanied by a competent declaration that affirms that  
18 the movant has complied with the meet and confer requirements imposed in the preceding  
19 paragraph and that sets forth with specificity the justification for the confidentiality  
20 designation that was given by the Designating Party in the meet and confer dialogue. The  
21 burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until  
22 the court rules on the challenge, all parties shall continue to afford the material in question the  
23 level of protection to which it is entitled under the Producing Party's designation.

## 24 25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
27 or produced by another Party or by a non-party in connection with this case only for  
28 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be

1 disclosed only to the categories of persons and under the conditions described in this Order.  
2 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
3 section 11, below (FINAL DISPOSITION). Protected Material must be stored and maintained  
4 by a Receiving Party at a location and in a secure manner that ensures that access is limited to  
5 the persons authorized under this Order.

6 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
7 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
8 disclose any information or item designated CONFIDENTIAL only to:

9 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
10 employees of said Counsel to whom it is reasonably necessary to disclose the information for  
11 this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is  
12 attached hereto as Exhibit A;

13 (b) the parties to the action, the officers, directors, and employees (including  
14 House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this  
15 litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

16 (c) experts (as defined in this Order) of the Receiving Party to whom  
17 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to  
18 Be Bound by Protective Order" (Exhibit A);

19 (d) the Court and its personnel;

20 (e) court reporters, their staffs, and professional vendors to whom disclosure is  
21 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by  
22 Protective Order" (Exhibit A);

23 (f) during their depositions, witnesses in the action to whom disclosure is  
24 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"  
25 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal  
26 Protected Material must be separately bound by the court reporter and may not be disclosed to  
27 anyone except as permitted under this Stipulated Protective Order.

28 (g) the author of the document or the original source of the information.



7.3 Disclosure of "HIGHLY CONFIDENTIAL – REVIEW BY AUTHORIZED

PERSONNEL ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL – REVIEW BY AUTHORIZED PERSONNEL ONLY" only to:

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

(b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(e) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – REVIEW BY AUTHORIZED PERSONNEL ONLY," the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order. The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or

1 order is the subject of this Protective Order. In addition, the Receiving Party must deliver a  
2 copy of this Stipulated Protective Order promptly to the Party in the other action that caused  
3 the subpoena or order to issue. The purpose of imposing these duties is to alert the interested  
4 parties to the existence of this Protective Order and to afford the Designating Party in this case  
5 an opportunity to try to protect its confidentiality interests in the court from which the  
6 subpoena or order issued. The Designating Party shall bear the burdens and the expenses of  
7 seeking protection in that court of its confidential material – and nothing in these provisions  
8 should be construed as authorizing or encouraging a Receiving Party in this action to disobey a  
9 lawful directive from another court.

#### 11 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

12 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
13 Material to any person or in any circumstance not authorized under this Stipulated Protective  
14 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
15 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,  
16 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms  
17 of this Order, and (d) request such person or persons to execute the “Acknowledgment and  
18 Agreement to Be Bound” that is attached hereto as Exhibit A.

#### 20 10. FILING PROTECTED MATERIAL.

21 Without written permission from the Designating Party or a court order secured after  
22 appropriate notice to all interested persons, a Party may not file in the public record in this  
23 action any Protected Material. A Party that seeks to file under seal any Protected Material must  
24 comply with Civil Local Rule 79-5.

#### 26 11. FINAL DISPOSITION.

27 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
28 after the final termination of this action, each Receiving Party must return all Protected

Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. With permission in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

## 12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: October 17, 2007

CASPER, MEADOWS & SCHWARTZ

*John C. Schwartz*  
Attorneys for Plaintiff  
JAN MAGNUSSEN

1  
2 DATED: October 18  
3 Sept, 2007

SILVANO B. MARCHESI, County Counsel

4 BY: [Signature]  
5 JANET L. HOLMES  
6 Deputy County Counsel  
7 Attorneys for Defendants

8  
9  
10  
11 ORDER

12 Pursuant to the foregoing Stipulation of the parties, and good cause appearing therefore,  
13 IT IS SO ORDERED.

14 DATED: \_\_\_\_\_, 2007

15 ELIZABETH LAPORTE  
16 UNITED STATES DISTRICT COURT JUDGE  
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and  
understand the Stipulated Protective Order that was issued by the United States District Court  
for the Northern District of California on \_\_\_\_\_, 2007 in the case of Jan  
Magnussen v. County of Contra Costa, et al., United States District Court Case Number  
C07-04307. I agree to comply with and to be bound by all the terms of this Stipulated  
Protective Order and I understand and acknowledge that failure to so comply could expose me  
to sanctions and punishment in the nature of contempt. I solemnly promise that I will not  
disclose in any manner any information or item that is subject to this Stipulated Protective  
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Northern District of California for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone  
number] as my California agent for service of process in connection with this action or any  
proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name:

\_\_\_\_\_  
[printed name]

Signature:

\_\_\_\_\_  
[signature]